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Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

Adv. Pro. No. 10-05061 (SMB)

ESTATE OF JAMES HELLER, BARBARA H.
FRIETAG, as personal representative and as an
individual, STEVEN P. HELLER, as personal
representative and as an individual, HARRY H.
FALK, as personal representative, EVE FRIETAG,
ELIZABETH FRIETAG DRANOFF, TRUST FBO
AN.D. [a minor] UNDER ARTICLES SIXTH AND

EIGHTH OF THE LAST WILL AND TESTAMENT OF JAMES HELLER, a New York trust, BARBARA H. FRIETAG, as trustee, TRUST FBO AL.D. [a minor] UNDER ARTICLES SIXTH AND EIGHTH OF THE LAST WILL AND TESTAMENT OF JAMES HELLER, a New York trust, BARBARA H. FRIETAG, as trustee, TRUST FBO S.H. [a minor] UNDER ARTICLES SIXTH AND EIGHTH OF THE LAST WILL AND TESTAMENT OF JAMES HELLER, a New York trust, STEVEN P. HELLER, as trustee, TRUST FBO KATHERINE HELLER UNDER ARTICLES SIXTH AND EIGHTH OF THE LAST WILL AND TESTAMENT OF JAMES HELLER, a New York trust, STEVEN P. HELLER, as trustee, KATHERINE HELLER, and ELEANOR LEACOCK,

Defendants.

STIPULATION AND ORDER

Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and the substantively consolidated estate of Bernard L. Madoff individually, by and through his counsel, Baker & Hostetler LLP, and defendants Estate of James Heller, Barbara H. Frietag, as personal representative and as an individual, Steven P. Heller, as personal representative and as an individual, Harry H. Falk, as personal representative, Eve Frietag, Elizabeth Frietag Dranoff, Trust FBO An.D. [a minor] Under Articles Sixth and Eighth of The Last Will and Testament of James Heller, a New York Trust, Barbara H. Frietag, as trustee, Trust FBO Al.D. [a minor] Under Articles Sixth and Eighth of The Last Will and Testament of James Heller, a New York Trust, Barbara H. Frietag, as trustee, Trust FBO S.H. [a minor] Under Articles Sixth and Eighth of The Last Will and Testament of James Heller, a New York trust, Steven P. Heller, as trustee, Trust FBO Katherine Heller Under Articles Sixth and Eighth of The Last Will and Testament of James Heller, a New York trust, Steven P. Heller, as trustee,

Katherine Heller, and Eleanor Leacock (“Defendants”), by and through their counsel (collectively, the “Parties”), hereby stipulate and agree to the following:

1. On December 2, 2010, the Trustee filed the complaint against Defendants (the “Complaint”).

2. On April 17, 2014, Defendants served an answer to the Complaint on the Trustee.

3. Numerous defendants in other related adversary proceedings, but not Defendants, filed motions to dismiss (the “Motions to Dismiss”) complaints or amended complaints filed against them by the Trustee.

4. On June 2, 2015, the Bankruptcy Court granted in part and denied in part the Motions to Dismiss for reasons set forth in its Memorandum Decision Regarding Omnibus Motions to Dismiss (the “Decision”) [ECF No. 10089 in Adv. Pro. No. 08-01789 (SMB)] which included a dismissal without prejudice of counts seeking to recover subsequent transfers from subsequent transferee defendants pursuant to section 550(a) of the Bankruptcy Code and applicable provisions of SIPA including section 78fff-2(c)(3).

5. In accordance with Federal Rule of Bankruptcy Procedure 7041(a)(1)(ii), and Federal Rule of Civil Procedure 41(a)(1), the Parties hereby stipulate to a dismissal of the Trustee’s Count 7 of the Complaint and all claims against defendants: (i) Barbara H. Frietag, as an individual; (ii) Steven P. Heller, as an individual; (iii) Eve Frietag; (iv) Elizabeth Frietag Dranoff; (v) Trust FBO An.D. [a minor] Under Articles Sixth and Eighth of The Last Will and Testament of James Heller and Barbara H. Frietag, as trustee (vi) Trust FBO Al.D. [a minor] Under Articles Sixth and Eighth of The Last Will and Testament of James Heller and Barbara H. Frietag, as trustee; (vii) Trust FBO S.H. [a minor] Under Articles Sixth and Eighth of the Last Will and Testament of James Heller and Steven P. Heller as Trustee; (viii) Trust FBO Katherine

Heller Under Articles Sixth and Eighth of the Last Will and Testament of James Heller and Steven P. Heller as Trustee; (ix) Katherine Heller; and (x) Eleanor Leacock (the “Dismissed Subsequent Transferee Defendants”) in the above-captioned adversary proceeding without prejudice.

6. On June 22, 2015, the Supreme Court of the United States denied *certiorari* of the Trustee’s appeal of *SIPC v. Ida Fishman Revocable Trust*, 14-1128 and *Picard v. Ida Fishman Revocable Trust*, 14-1129 (the “Supreme Court Decision”), and thus section 546(e) of the Bankruptcy Code applies to this adversary proceeding.

7. Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, as incorporated by Rule 7041 of the Federal Rules of Bankruptcy Procedure, the Trustee’s claims in Counts Two through Six of the Complaint, including claims against defendants Estate of James Heller (“Estate”) and Barbara H. Frietag, Steven P. Heller and Harry H. Falk as personal representatives of the Estate (the “Dismissed Two to Six-Year Transfer Defendants,” and collectively with the Dismissed Subsequent Transferee Defendants, the “Dismissed Defendants”), are hereby dismissed with prejudice.

8. The Trustee’s claims in counts two through seven are dismissed as to Barbara H. Frietag, Steven P. Heller and Harry H. Falk as individuals, but they remain defendants in the Adversary Proceeding in their capacity as personal representatives of the Estate with respect to count one.

9. Nothing herein shall affect the Trustee’s claims in the Adversary Proceeding against any defendant other than the Dismissed Defendants, and the Trustee hereby preserves all his rights and claims against any defendant other than the Dismissed Defendants.

10. Upon the dismissal of the Dismissed Defendants, the caption of the Adversary Proceeding is hereby amended to delete the Dismissed Defendants from the caption. The amended caption of the Adversary Proceeding shall appear as indicated in Exhibit A hereto.

11. The provisions of this Stipulation shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns and upon all creditors and parties of interest.

12. This Stipulation may be signed by the Parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this Stipulation shall be deemed an original.

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Dated: November 1, 2016

Of Counsel:

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of Bernard L. Madoff Investment Securities
LLC and the Estate of Bernard L. Madoff*

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Attorneys for Defendants

SO ORDERED

Dated: November 4th, 2016
New York, New York

/s/ STUART M. BERNSTEIN

**HON. STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE**

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
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Defendant.

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IRVING H. PICARD, Trustee for the
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Securities LLC,

Plaintiff,

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ESTATE OF JAMES HELLER, BARBARA H.
FRIETAG, as personal representative, STEVEN
P. HELLER, as personal representative and
HARRY H. FALK, as personal representative,

Defendants.

Adv. Pro. No. 08-01789 (SMB)
SIPA LIQUIDATION

(Substantively Consolidated)

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